

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LISA ANN DAVIS,

Defendant.

No. 15-CR-2028-LRR

FINAL JURY INSTRUCTIONS

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 1

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdicts should be.

INSTRUCTION NO. 3

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, unaffected by anything except the evidence, your common sense and the law as I give it to you.

INSTRUCTION NO. 4

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

- (1) Statements, arguments, questions and comments by the lawyers are not evidence.
- (2) Anything that might have been said by jurors, the attorneys or the judge during the jury selection process is not evidence.
- (3) Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
- (4) Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
- (5) Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, documents were referred to but were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

INSTRUCTION NO. 5

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 6

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to the testimony of each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 7

In the previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony.

INSTRUCTION NO. 8

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become experts in some field may state their opinions on matters in that field and may also state the reasons for their opinions.

Expert testimony should be considered just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used and all the other evidence in the case.

INSTRUCTION NO. 9

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and you should leave the exhibits in the jury room in the same condition as they were received by you.

INSTRUCTION NO. 10

A reasonable doubt is a doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 11

The Indictment in this case charges the defendant with three different crimes.

In Count 1, the Indictment charges that, beginning on or about August 2, 2010, and continuing to on or about June 20, 2015, in the Northern District of Iowa and elsewhere, the defendant did knowingly and intentionally combine, conspire, confederate, and agree with persons known and unknown to the Grand Jury, to manufacture a mixture or substance containing a detectable amount of methamphetamine, a Schedule II controlled substance.

In Count 2, the Indictment charges that on or about June 20, 2015, in the Northern District of Iowa, the defendant did knowingly and intentionally attempt to manufacture, and did aid and abet the attempted manufacture of, a mixture or substance containing a detectable amount of methamphetamine, a Schedule II controlled substance.

In Count 3, the Indictment charges that on or about June 20, 2015, in the Northern District of Iowa, the defendant did knowingly and intentionally possess a quantity of pseudoephedrine, a List I chemical, with intent to manufacture methamphetamine, and knowing or having reasonable cause to believe that the pseudoephedrine would be used to manufacture methamphetamine, a Schedule II controlled substance.

The defendant has pleaded not guilty to these charges.

The Indictment is simply the document that formally charges the defendant with the crimes for which she is on trial. The Indictment is not evidence. At the beginning of the trial, I instructed you that you must presume the defendant to be innocent. Thus, the defendant begins the trial with a clean slate, with no evidence against her.

The presumption of innocence alone is sufficient to find the defendant not guilty of each count. This presumption may be overcome as to each charge only if the government proved during the trial, beyond a reasonable doubt, each element of the charge.

(CONTINUED)

INSTRUCTION NO. 11 (Cont'd)

There is no burden upon the defendant to prove that she is innocent. Instead, the burden of proof remains on the government throughout the trial. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdicts.

INSTRUCTION NO. 12

The crime of conspiracy to manufacture methamphetamine, as charged in Count 1 of the Indictment, has three elements, which are:

One, beginning on or about August 2, 2010, and continuing to on or about June 20, 2015, two or more persons reached an agreement or came to an understanding to manufacture a mixture or substance containing a detectable amount of methamphetamine;

Two, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect; and

Three, at the time the defendant joined in the agreement or understanding, she knew the purpose of the agreement or understanding.

If all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 1; otherwise you must find the defendant not guilty of the crime charged under Count 1.

INSTRUCTION NO. 13

In considering whether the government has met its burden of proving a conspiracy as alleged in Count 1 of the Indictment, you are further instructed as follows:

The government must prove, beyond a reasonable doubt, that the defendant reached an agreement or understanding with at least one other person to manufacture methamphetamine. It makes no difference whether that other person is named in the Indictment as long as you find beyond a reasonable doubt that there was at least one other co-conspirator.

The “agreement or understanding” need not be an express or formal agreement or in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members directly stated among themselves the details or purpose of the scheme.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy but who happens to act in a way which advances some purposes of one, does not thereby become a member. A person’s mere knowledge of the existence of a conspiracy, or mere knowledge that an objective of a conspiracy was being considered or attempted, or mere approval of the purpose of a conspiracy, is not enough to prove that the person joined in a conspiracy.

(CONTINUED)

INSTRUCTION NO. 13 (Cont'd)

But a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further, it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

You must decide, after considering all of the evidence, whether the conspiracy alleged in Count 1 of the Indictment existed. If you find that the alleged conspiracy did exist, you must also decide whether the defendant voluntarily and intentionally joined the conspiracy, either at the time it was first formed or at some later time while it was still in effect, with the intent to further the crime of manufacture of methamphetamine. In making that decision, you must consider only evidence of the defendant's own actions and statements. You may not consider actions and pretrial statements of others, except to the extent that pretrial statements of others describe something that had been said or done by the defendant.

It is not necessary for the government to prove that the conspiracy actually succeeded.

INSTRUCTION NO. 14

If you have found beyond a reasonable doubt that a conspiracy existed and that the defendant was one of its members, then you may consider acts knowingly done and statements knowingly made by the defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to the defendant, even though they were done or made in the absence of and without the knowledge of the defendant. This includes acts done or statements made before the defendant joined the conspiracy, because a person who knowingly, voluntarily and intentionally joins an existing conspiracy is responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

INSTRUCTION NO. 15

The crime of attempting to manufacture a mixture or substance containing a detectable amount of methamphetamine, as charged in Count 2 of the Indictment, has three elements, which are:

One, on or about June 20, 2015, the defendant intended to manufacture a mixture or substance containing a detectable amount of methamphetamine;

Two, the defendant knew the mixture or substance she then intended to manufacture contained a detectable amount of methamphetamine; and

Three, the defendant voluntarily and intentionally carried out some act which was a substantial step towards manufacturing a mixture or substance containing a detectable amount of methamphetamine.

A person may also be found guilty of attempt to manufacture a mixture or substance containing a detectable amount of methamphetamine even if she personally did not do every act constituting the offense charged, if she aided or abetted the attempt to manufacture a mixture or substance containing a detectable amount of methamphetamine.

In order to have aided and abetted the attempt to manufacture a mixture or substance containing a detectable amount of methamphetamine, a person must, before or at the time the attempt to manufacture a mixture or substance containing a detectable amount of methamphetamine was committed:

- (1) have known the crime of attempting to manufacture a mixture or substance containing a detectable amount of methamphetamine was committed or going to be committed;

(CONTINUED)

INSTRUCTION NO. 15 (Cont'd)

- (2) have had enough advance knowledge of the extent and character of the attempt to manufacture a mixture or substance containing a detectable amount of methamphetamine that she was able to make the relevant choice to walk away from the attempt to manufacture a mixture or substance containing a detectable amount of methamphetamine before all elements of the attempt to manufacture a mixture or substance containing a detectable amount of methamphetamine were complete;
- (3) have knowingly acted in some way for the purpose of causing, encouraging or aiding the attempt to manufacture a mixture or substance containing a detectable amount of methamphetamine; and
- (4) have intended for a mixture or substance containing a detectable amount of methamphetamine to be manufactured.

If all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 2; otherwise you must find the defendant not guilty of the crime charged under Count 2.

You may infer that the defendant had the requisite advance knowledge of the attempt to manufacture a mixture or substance containing a detectable amount of methamphetamine if you find the defendant failed to object or withdraw from actively participating in the attempt to manufacture a mixture or substance containing a detectable amount of methamphetamine after the defendant observed another participant complete some act which was a substantial step towards manufacturing a mixture or substance containing a detectable amount of methamphetamine.

(CONTINUED)

INSTRUCTION NO. 15 (Cont'd)

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

INSTRUCTION NO. 16

A substantial step, as used in the previous instruction, must be something more than mere preparation, yet may be less than the last act necessary before the actual commission of the substantive crime. In order for behavior to be punishable as an attempt, it need not be incompatible with innocence, yet it must be necessary to the consummation of the crime and be of such a nature that a reasonable observer, viewing it in context, could conclude beyond a reasonable doubt that it was undertaken in accordance with a design to violate the statute. Crimes such as attempt to manufacture methamphetamine require a defendant to engage in numerous preliminary steps which brand the enterprise as criminal.

INSTRUCTION NO. 17

The crime of possession of pseudoephedrine for use in manufacture and with intent to manufacture, as charged in Count 3 of the Indictment, has three elements, which are:

One, on or about June 20, 2015, the defendant was in possession of pseudoephedrine;

Two, the defendant's possession of the pseudoephedrine was knowing or intentional; and

Three, the defendant (1) possessed the pseudoephedrine with intent to manufacture methamphetamine, or (2) had reasonable cause to believe that the pseudoephedrine would be used to manufacture methamphetamine, or both.

If all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 3; otherwise you must find the defendant not guilty of the crime charged under Count 3.

INSTRUCTION NO. 18

The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Whenever the word “possession” has been used in these instructions it includes actual as well as constructive possession and also sole as well as joint possession.

INSTRUCTION NO. 19

You are instructed as a matter of law that methamphetamine is a Schedule II controlled substance. You are instructed as a matter of law that pseudoephedrine is a List I chemical. You must ascertain whether or not the substance in question as to Counts 1 and 2 was methamphetamine. You must ascertain whether or not the substance in question as to Count 3 was pseudoephedrine. In so doing, you may consider all the evidence in the case which may aid in the determination of that issue.

INSTRUCTION NO. 20

The government is not required to prove that the defendant knew that her acts or omissions were unlawful. An act is done “knowingly” if a defendant is aware of the act and did not act through ignorance, mistake or accident. You may consider evidence of the defendant’s acts and words, along with other evidence, in deciding whether the defendant acted knowingly:

INSTRUCTION NO. 21

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have previously mentioned, it is entirely up to you to decide what facts to find from the evidence.

INSTRUCTION NO. 22

You will note that the Indictment charges that Count 1 was committed “beginning on or about August 2, 2010, and continuing to on or about June 20, 2015,” and Count 2 and Count 3 were committed “on or about June 20, 2015.” The government need not prove with certainty the exact date or the exact time period of the offenses charged. It is sufficient if the evidence establishes that the offenses occurred within a reasonable time of the date or period of time alleged in the Indictment.

INSTRUCTION NO. 23

You must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and the court reporter cannot read back lengthy testimony.

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 24

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because each of your verdicts—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach your verdicts.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Fifth, your verdicts must be based solely on the evidence and on the law that I have given to you in my instructions. Each verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts should be—that is entirely for you to decide.

INSTRUCTION NO. 25

Attached to these instructions you will find the Verdict Forms. These are simply the written notices of the decisions that you reach in this case. The answers to the Verdict Forms must be the unanimous decisions of the Jury.

You will take the Verdict Forms to the jury room, and when you have completed your deliberations and each of you has agreed to the answers to the Verdict Forms, your foreperson will fill out the Verdict Forms, sign and date them and advise the Court Security Officer that you are ready to return to the courtroom. Your foreperson should place the signed Verdict Forms in the blue folder, which the court will provide you, and then your foreperson should bring the blue folder when returning to the courtroom.

Finally, members of the Jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Forms in accord with the evidence and these instructions.

November 19, 2015
Date

Linda R. Reade
Linda R. Reade, Chief Judge
United States District Court
Northern District of Iowa